

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION AND
CLARIFICATION**

I. Introduction

The Nebraska Rural Independent Companies¹ (the “Nebraska Companies”), submit their opposition to the Petitions for Reconsideration of the ETC designation *Report and Order*² filed on behalf of the following parties: CTIA-The Wireless AssociationTM (“CTIA”), Nextel Partners, Inc. (“Nextel Partners”), Dobson Cellular Systems, Inc. (“Dobson”), and Centennial Communications Corp. (“Centennial”) in the above-captioned proceeding.

The Nebraska Companies oppose the petitions, which request modifications to the requirement for eligible telecommunications carrier (“ETC”) applicants to submit a five-year network improvement plan. The Nebraska Companies also oppose petitions requesting changes to the requirement that the plan be presented on a wire center-by-wire

¹ The Nebraska Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (“*Report and Order*”) (rel. March 17, 2005).

center basis. Further, the Nebraska Companies disagree that clarification is needed regarding whether or not states have the legal authority to define what constitutes a “reasonable request for service” and the states’ authority to require equal access when exercising jurisdiction over ETC designation requirements.

II. The Commission Should Not Alter Its Requirement For an ETC Applicant to Submit a Formal Five-Year Network Improvement Plan

In its Petition, CTIA supports the Federal Communications Commission’s (“Commission”) conclusion to rigorously enforce the statutory requirement that ETC applicants demonstrate their capability and commitment to provide service throughout the designated service area to all customers making a reasonable request for service.³ However, according to CTIA, the five-year planning requirement is too long and “reminiscent of Communist central planning.”⁴

Additionally, Centennial asserts that the five-year planning requirement will produce no useful results and urges the Commission to reconsider the five-year plan requirement.⁵ Dobson believes a five-year network improvement plan will not provide meaningful documentation of the commitment and ability to provide the supported services.⁶ Nextel Partners asserts that the five-year planning obligation will require a

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration of CTIA – The Wireless AssociationTM (“*CTIA Petition*”) (filed June 24, 2005) at p. 3.

⁴ *Id.* at p. 4.

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration filed on behalf of Centennial Communications Corp. (“*Centennial Petition*”) (filed June 24, 2005) at p. 3.

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration of Dobson Cellular Systems, Inc. (“*Dobson Petition*”) (filed June 24, 2005) at p. 3.

costly effort in forecasting solely to satisfy a regulatory requirement⁷ and requests that the Commission shorten the forecasting requirement.⁸

The Nebraska Companies disagree with the assertions of CTIA, Nextel Partners, Dobson and Centennial. As the Commission found in its *Report and Order*, rigorous ETC designation requirements, which include the submission of a five-year service improvement plan, will ensure that only those ETCs that can adequately provide universal service will receive ETC designation, thereby reducing fund growth attributable to ETC designations and enhancing the long-term sustainability of the universal service fund.⁹ Requiring an applicant seeking ETC designation to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation will help the Commission and state commissions to ensure a more predictable ETC designation process and will improve the long-term sustainability of the universal service fund. In addition, such a requirement will help to ensure that support is effectively targeted to carriers serving high cost areas.¹⁰ The submission of a five-year plan will help ensure that any carrier seeking ETC designation actually uses its universal service fund support in high cost areas by providing the Commission and state commissions a benchmark against which to measure the carrier's progress toward

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Reconsideration and Clarification Filed by Nextel Partners, Inc. ("*Nextel Partners Petition*") (filed June 24, 2005) at p. 12.

⁸ Ibid.

⁹ See *Report and Order* at para. 5.

¹⁰ Id. at para. 9.

completing or improving a network that will permit it to reach the universal service goals to which the ETC has committed itself.¹¹

ETC applicants should be allowed to submit a plan for a period of less than five years only if they can demonstrate that they will be able to provide the supported services to all requesting customers in a period of time that is less than five years. Thus, the planning horizon of the build-out plan would correspond with the amount of time necessary for the ETC applicant to provide universal service - that is, service *throughout* the *entire* service area for which it seeks designation, including remote and high cost areas. Without such a plan, the Commission and state commissions cannot make a determination that the carrier actually has a planned commitment to serve those areas.

III. The Commission Must Continue to Require ETCs to Submit Information at the Wire Center Level.

CTIA also asserts that the Commission must move away from wireline centric metrics for its universal service policies¹² and allow wireless competitive ETCs (“CETCs”) to submit information based upon their own wireless network infrastructure.¹³ The Nebraska Companies believe that submission of information at a wire center level is essential to reduce opportunities for creamskimming.

Current Commission rules specify that a CETC receive the same amount of support as an ILEC for each subscriber line that it serves.¹⁴ Furthermore, a CETC is required to report to the Administrator of the Universal Service Administrative Company

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the National Telecommunications Cooperative Association, (filed Aug. 6, 2004) at pp. 17-18.

¹² See *CTIA Petition* at p. 9.

¹³ *Id.* at p. 11.

¹⁴ See 47 C.F.R. § 54.307.

the number of working loops it serves in a service area.¹⁵ In the case of a CETC serving loops in the service area of a rural incumbent local exchange carrier (“ILEC”), the carrier must report, by customer class, the number of working loops it serves in the service area, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to 47 C.F.R. § 54.315.¹⁶

Therefore, because support amounts are based upon ILEC support by zone, reporting of data, including a build-out plan that includes data by ILEC wire centers, is necessary to evaluate opportunities for creamskimming. Without wire center-by-wire center data, it would be extremely difficult for the Commission and state commissions to evaluate whether a CETC will have an opportunity to engage in creamskimming by *selectively* building out into areas in which it can maximize its receipt of universal service while minimizing its costs. The submission of a build-out plan on a wire center basis is especially important for wireless CETCs because, as the Commission has noted, the cost characteristics of a rural ILEC and CETC applicant may differ substantially, compounding the opportunities for creamskimming.¹⁷

As indicated above, wireless CETCs are already required to report the number of subscribers they serve by wire center. Therefore, reporting information on the planned build out of facilities by wire center should not be administratively burdensome. In fact, it is prudent business planning to forecast where customers will be served on a detailed

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ See *Report and Order* at para. 51.

basis. In order to forecast such information, knowledge of tower location by wire center would be necessary.

IV. States Have the Legal Authority to Determine What Constitutes a Reasonable Request for Service.

Nextel Partners requests that the Commission clarify that states do not have the authority to alter or deviate from the requirements of what constitutes a “reasonable request for service” specified in the *Report and Order*.¹⁸ Dobson maintains that the definition of a reasonable request for service and build-out requirements are a matter of Federal law and the Commission should reconsider these conclusions.¹⁹ In the *Report and Order*, the Commission encouraged states to adopt its eligibility requirements, including the commitment and ability to provide the supported services to all requesting customers within its designated service area.²⁰ Further, the Commission stated states adopting these requirements should determine, pursuant to state law, what constitutes a “reasonable request” for service. According to Nextel Partners, allowing states to determine “pursuant to state law” what constitutes a “reasonable request for service” is an inappropriate delegation by the Commission to the states of the authority to interpret Federal law.²¹

In making such assertions, Nextel Partners and Dobson disregard 47 U.S.C. § 214(e)(2). Section 214(e)(2) delegates to the states the responsibility of finding that designating an additional eligible telecommunications carrier for an area served by a rural

¹⁸ See *Nextel Partners Petition* at pp. 11-12.

¹⁹ See *Dobson Petition* at pp. 7-8.

²⁰ See *Report and Order* at para. 21.

²¹ See *Nextel Partners Petition* at p. 10.

telephone company to be in the public interest. As part of its public interest analysis, a state commission may require that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. The Commission has previously found that its federal guidelines concerning ETC qualifications should be flexible and non-binding on the states.²² It further found that the federal guidelines are consistent with the United States Court of Appeals for the Fifth Circuit, holding that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements beyond the statutory requirements described in section 214(e)(1).²³ Thus, Section 214(e) delegates to the states the right to determine what constitutes a reasonable request for service.

V. States Have the Authority to Require ETCs to Provide Equal Access in ETC Applications before the States

Nextel Partners asserts that the Commission should make clear that only the Commission, not any state, can require any wireless carrier to provide equal access to interexchange services.²⁴ The Nebraska Companies disagree with Nextel Partners assertion.

On July 10, 2002, the Federal-State Joint Board on Universal Service (“Joint Board”) provided the Commission its recommendation regarding whether any services should be added to or removed from the definition of services supported by universal service.²⁵ Commissioners Martin and Copps, former Commissioner Rowe and Consumer

²² See *Report and Order* at para. 61.

²³ *Ibid.*

²⁴ See *Nextel Partners Petition* at p. 3.

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. July 10, 2002) at pp. 30-31.

Advocate Gregg (the “Joint Board Members in Support of Equal Access”) each supported recommending the addition of equal access to the list of supported services. They found that section 332(c)(8) presented no obstacle to the inclusion of equal access in the list of core services supported by universal service funding, and that including equal access in the definition of supported services does not in any manner require any Commercial Mobile Radio Service (“CMRS”) carrier to provide equal access as part of its obligations as a common carrier. However, the Joint Board Members in Support of Equal Access found that if a carrier wishes to seek ETC status and receive universal service support, then all ETCs, including CMRS providers, should offer all of the supported services, including equal access.

While there were Joint Board members that did not agree that equal access to interexchange services should be added to the list of supported services, many of the members recognized the importance of offering equal access if a carrier were the only ETC serving a given area. In its *Notice of Proposed Rulemaking*, the Joint Board recommended that the Commission adopt guidelines encouraging states, as a condition of ETC designation, to require CETCs to be prepared to provide equal access if all other ETCs in a given service area exercise their rights to relinquish their designations pursuant to section 214(e)(4).²⁶ In its *Report and Order*, the Commission adopted the Joint Board’s recommendation²⁷ and encouraged state commissions to apply this requirement as well as other eligibility requirements to all ETC applicants over which they exercise jurisdiction.

²⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004) at para. 59.

²⁷ See *Report and Order* at para. 35.

Nextel Partners' argument is flawed because although states cannot require a CETC, including a wireless CETC, to provide equal access outside of an ETC proceeding, a state commission may require an applicant to provide equal access as a condition of receiving ETC status. The United States Court of Appeals for the Fifth Circuit has held that nothing in section 214(e) of the Act prohibits the states from imposing additional ETC eligibility requirements on applicants. Additionally, the Joint Board's action, stating that section 332(c)(8) is not an obstacle for including equal access in the list of core services supported by universal service funding, demonstrates that equal access could be included as an additional requirement by a state commission. States have the authority, if they desire, to require any carrier seeking ETC status, including wireless carriers, to offer equal access.

VI. Conclusion

The Commission should reject the petitions of CTIA, Nextel Partners, Dobson and Centennial as they relate to amending the five-year plan. Further, the Commission should reject the request to change the requirement for submission of data at the wire center level. Finally, the Commission should reject the argument that state commissions lack the authority to define what constitutes "a reasonable request for service" or the authority to require equal access in the context of an ETC designation.

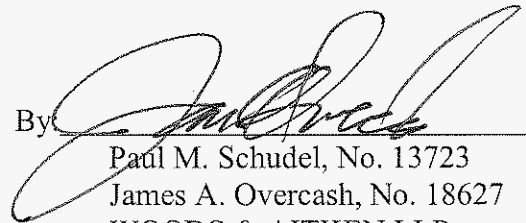
Dated: August 4, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 4, 2005, a true and correct copy of the foregoing **Opposition to Petitions for Reconsideration and Clarification** was transmitted for filing with the Federal Communications Commission by way of its Electronic Comment Filing System, with photocopies of the same being sent via regular U.S. Mail, first class postage fully prepaid, to all parties to the within proceeding as set forth below:

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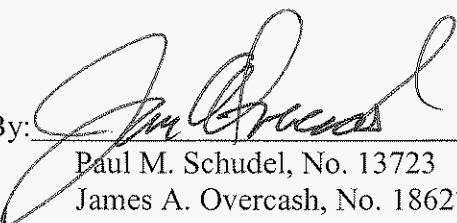
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